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MARCH 1982

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NUMBER 1

This Issue in Brief

Structuring the Exercise of Sentencing Discretion in the Federal Courts.—Brian Forst and William Rhodes report results of a major study of Federal sentencing practices, focusing on highlights that have special relevance to the probation community: survey results on the purposes of sentencing, an analysis of recent sentencing decisions, and an analysis of the information contained in the presentence investigation report. The survey revealed that Federal probation officers and judges, on the whole, regard deterrence and incapacitation as more important goals of sentencing than either rehabilitation or just deserts. The judges individually, on the other hand, are divided over the goals of sentencing.

Zero-Sum Enforcement: Some Reflections on Drug Control.—This article reflects upon the dilemmas in drug control efforts and suggests that current policy and practices be reviewed and modified in order to evolve a "more coherent" approach to the problem. The authors critique the methods of evaluating drug enforcement efforts and provide a series of rationales that can be employed in the decisionmaking process.

Inreach Counseling and Advocacy With Veterans in Prison.—A self-help model of direct and indirect services is provided through a Veterans Administration veterans-in-prison (VIP) pilot program. Authors Pentland and Scurfield describe objectives and methodology of the program, including the formation of incarcerated veterans into self-help groups, organization of community-based resources into VIP teams that visit the prisons, serving veteran-related issues and services such as discharge upgrading and Agent Orange, and a diversionary program for veterans in pretrial confinement.

The Probation Officer and the Suicidal Client.—This article by Federal probation officers Casucci and Powell attempts to provide the probation officer with enough information to be able to

recognize and deal effectively with the suicidal client. The authors furnish an overview of the problem of suicide, a profile of the suicidal client, and the therapeutic response of the probation officer in this crisis situation.

An Experiential Focus on the Development of Employment for Ex-Offenders.—U.S. Probation Officer Stanley S. Nakamura of the Northern District of California states that a concerted effort

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has been made in his District to establish an employment program that would provide real assistance to those clients interested in working. Integrity, friendship, patience, professionalism, trust, placement, and followthrough are the basis of a successful employment program, he concludes.

Alienation and Desire for Job Enrichment Among Correction Officers.—Responses to a correction officer opinion survey suggest that C.O.'s hold attitudes toward their job that are similar to those of other contemporary workers, report Hans Toch and John Klofas. Like other urban workers, urban C.O.'s tend to be very alienated; like workers generally, most C.O.'s are concerned with job enrichment or job expansion.

BARS in Corrections.—Evaluating the job performance of employees is a perennial problem for most correctional organizations, according to Wiley Hamby and J.E. Baker. The use of Behaviorally Anchored Rating Scales (BARS) appears to be a viable alternative for evaluating the performance of employees in corrections, they maintain.

Redesigning the Criminal Justice System: A Commentary on Selected Potential Strategies.—Selected strategies are highlighted by Attorney Tommy W. Rogers which would appear worthy of consideration in any contemplated alteration of the criminal justice system. Suggestions are made concerning modification of the criminal law detection and apprehension strategies, improving the administrative and judicial efficiency of courts, redressing system neglect of victims, and utilization of research in planning and legislation.

Strategies for Maintaining Social Service Programs in Jails.—Social services within jails and community-based alternatives to incarceration are vulnerable to cutbacks, asserts Henry Weiss of the Wharton School in Philadelphia. His article suggests a number of strategies for maintaining the improvements in service delivery that have been so painstakingly won over the past 15 years.

Promises and Realities of Jail Classification.—The process by which jails reach classification decisions has rarely been studied due to the preoccupation of the field with predictive models, assert James Austin and Paul Litsky of the National Council on Crime and Delinquency Research Center. The authors' opinions expressed in this article are based on their findings of a comparative process study of four jail classification systems.

Crime Victim Compensation: A Survey of State Programs.—Compensating crime victims for injuries sustained as a result of their victimization has evolved into a highly complex practice, report Gerard F. Ramker and Martin S. Meagher of Sam Houston State University. Their study showed that the state compensation programs in existence today are subject to similarities in certain organizational characteristics and also appear to share certain disparities.

Probation Officers Do Make a Difference.—This article by Marilyn R. Sánchez of the Hennepin County (Minn.) Probation Department examines the successful interaction between probation officer and client. Her article discusses a three-issue model for feedback from probationers: (1) the "exit interview" with the probationer, (2) presentations in schools, and (3) the postprobation checkoff list.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

investigating the use of the Kentucky BARS in their agency, the first author has developed a transportability procedure, available by contacting him at the U.S. Office of Personnel Management, 75 Spring St., S.W., Atlanta, Georgia 30303.

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Redesigning the Criminal Justice System: A Commentary on Selected Potential Strategies

BY TOMMY W. ROGERS

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IT IS UNLIKELY that any general evaluative statement about the criminal justice system, or nonsystem as some observers style it,¹ would bring such widespread agreement as the proposition that the system is not functioning as smoothly, harmoniously, and effectively as might be desired.

The criminal justice system may be described as a loosely articulated operating network of input-output relationships among entities processing criminal justice matters (principally persons and information). It is comprised of a variety of units, performing different functions, and operating at different levels of government, directed toward a common general objective (processing criminal justice matters). It is a system in that a number of processes are linked together in the common task of seeking to accomplish overall system goals. Because these units are functionally interrelated, a change in one event or in one part of the system produces a change of greater or lesser magnitude in other segments of the system. Consequently, any comprehensive analysis must look at the en-

tire system as a unit rather than concentrating on changes or reforms in only a single unit or subsystem.

Numerous observers have pointed out that various components of the system actually work at cross purpose to each other, and that an absence of effective coordination among them has dysfunctional consequences. It is further pointed out that the methods used by various subsystem units in carrying out their particular tasks have contraindicated effects in terms of system goals. For example, if the result of processing through the criminal justice system is to maximize opportunity to reenter the community without again becoming a system input, those aspects of the experience which work against the potential for reentry with minimal discontinuity are effectively thwarting an avowed overall goal of the system. Many components of the system, such as the prison experience, are said to function in a manner which has effects totally opposite of those envisioned, i.e., prisons as progenitors of crime and recidivism rather than reducing the likelihood of future criminal conduct.

If there is any lesson to be learned from efforts at reform of the criminal justice system it is probably that of humility as to the ultimate effect of any

¹Ernest Van Den Haag, "Crime or Punishment?" *National Review*, XXXI (March 2, 1979), 286; President's Commission on Law Enforcement and Administration of Justice, *The Task Force Report: Science and Technology* (Washington, D.C.: Government Printing Office, 1967), p. 53.

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system change. Today's far-reaching and enlightened change, or so the history of corrections efforts demonstrates, may easily become the problematic pot-pourri against which tomorrow's enlightenment will be directed. A second lesson which might be well taken is that of the limits of any particular reformatory alteration of technique, method, or philosophy as being able to turn the corner for the system, and change all of the system's dysfunctional consequences into consequences that are harmoniously integrated with some singular overarching objective. Furthermore, the multifaceted nature and complexity of the system and the disparate variables which factor into the behavior which brings one into contact with processing mechanisms of the criminal justice system augurs against overly optimistic assumptions of alteration in a single aspect of the unit without corresponding modifications throughout the system, or against single track or monocausal remedies.²

This statement does not undertake any comprehensive reorganization of the criminal justice system; rather, the objective is to suggest and highlight some selected strategies which appear to be worthy of consideration in contemplating the task of system reorganization.

I. Criminal Law

The criminal law determines what behavior, by omission or commission, is regarded as a crime. It also specifies the punishment for such transgression. Violations of criminal statutes, in contrast to civil violations which are regarded as offenses against the individual and for which redress or remedy must be sought by a private or civil action, are regarded as crimes against the state, and are prosecuted under state auspices.

Criminal law, in essence, is determined by what kind of people hold what values (which they feel may be effectuated through legal proscriptions) at what point in time. Criminal law, then, is relative to time and place. Since criminal behavior, by definition, is a violation of a legislatively enacted and formulated rule (or a judicially formulated rule supposedly within the framework of constitutional or statutory intent), it follows in rather straightforward fashion that one of the most visible

²An example would be a belief that stricter statutory penalties would solve the crime problem. Furthermore, if police efficiency in clearing crimes by arrest miraculously improved, if felons are returned to the streets by the courts or the corrections system, or if they are processed through the corrections systems with a likelihood of recidivism, the "crime problem" has not been solved. If political gesturing could effectively control crime, the crime problem would have been mitigated some time ago.

³Norval Morris and Gordon Hawkins, *The Honest Politician's Guide to Crime Control* (Chicago: Univ. of Chicago Press, 1970), pp. 2-28. Cf. Ed Clark, *A New Beginning* (East Hobart, N.J.: Caroline House, 1980), pp. 100-111.

⁴Morris and Hawkins, pp. 2, 3.

and apparent methods of reducing crime would be to reduce the scope of the behavior which is defined as criminal.

Many observers have commented on the detrimental consequences of "criminal overreach." Most commentaries on overreach of the criminal law emphasize the inefficacy or inappropriateness of criminalizing various kinds of moral prohibitions and/or of processing persons who are thereby brought into the criminal justice ambit by traditional means. Examples include laws regarding consensual sex acts, crimes without victims, or substance ingestion laws (such as drugs or laetrile) on the one hand to use of the criminal process for handling items which are civil rather than criminal in nature (such as enforcement of support payments), on the other.

Morris and Hawkins, for instance, starting from the perspective that the prime function of the criminal law should be to protect the citizen's person and property, feel that use of the criminal law to coerce men toward virtue by regulating the private moral conduct of the citizenry is expensive, ineffective, and criminogenic.³ Morris and Hawkins contend that the criminal law is an inefficient instrument for imposing the good life on others. When the criminal law invades the spheres of private morality and social welfare, it exceeds its proper limits at the cost of neglecting its primary task. A more proper, modest, and realistic role of the criminal law, and revision accordingly, is requisite to clear the ground of action of criminal law and enable the police, courts, and correctional agencies to "deal only with those problems and those people for whom their services and their capacities are appropriate; not those who are merely being sacrificed to prejudice and taboos."⁴

Overreach of the criminal law is said to compound the crime problem in the following ways:

(1) The criminal law operates as a "crime tariff" which makes the supply of such goods as narcotics and gambling profitable for criminal organization and activity.

(2) Criminal prohibition and law enforcement produce a secondary criminogenic effect by fostering crime in order to pay the higher prices as well as by fostering development of profitable large-scale organized criminal activity.

... the drug laws have a greater effect than Prohibition in encouraging crime. It was no accident that Prohibition was the age of the great gangsters, and a time of "primitive capital accumulation" for the big crime families. By the same token, it is no accident that, under the aegis of our drug laws, our cities have become the stalking-grounds for the users of drugs who must pay ridiculously exorbitant prices

to support their habits. The time is coming when we will have to choose between imposing our norms for intoxicants on a large portion of the population, and having cities we can live in.⁵

(3) Proscription of some forms of behavior, such as homosexuality, or drug addiction, encourages development of an extensive criminal subculture and/or endows forbidden and frequently pathological conditions with a romantic glamour of a rebellion against authority or of some sort of elitist enterprise.

(4) Diversion and overextension of resources to enforce statutes regulating private morality siphons resources away from concentrating on crime against persons and/or property and encourages serious crime by failing to deal with it adequately.

(5) Criminalization of "crimes" without victims invites bribery and corruption among enforcers and is conducive to employment of extra-legal and arbitrary methods of enforcement.

There is little doubt but that any plan to deal with crime in America must face the problem of utilization of the criminal law as symbolic expressions of moral fervor, ecclesiastical glory, and political virtue by invoking criminal sanctions in matters of personal morality and victimless crime. There is a tendency for the criminal law to grow incrementally and to assume an inchoate status as the product of historical accidents. Laws dealing with gambling, sexual behavior, drug laws, pornography laws, are among those frequently identified as appropriate for a judicious application of an effort at reassessment and restatement of the nature of legislatively desired priorities in regard to invoking of criminal sanctions.

Establishment of a legislative standing committee on law revision, charged with the task of continuing assessment of the suitability of the criminal law, would be a desirable step. Among the advantages would be the increased likelihood of awareness of need for consolidation, codification, and constant critical observation of the whole body of criminal law.⁶ Removal of the deadwood

⁵Clark, p. 105.

⁶Morris and Hawkins, p. 27.
⁷See Daniel B. Kennedy, *The Dysfunctional Alliance: Emotion and Reason in Justice Administration* (Cincinnati: Anderson Publishing Co., 1977), or Burton Atkins and Mark Pogrebin, *The Invisible Justice System: Discretion & the Law* (Cincinnati: Anderson Publishing Co., 1978).

⁸Martin H. Tish, "Duplicative Statutes, Prosecutorial Discretion, and The Illinois Violence Statute," *Journal of Criminal Law and Criminology*, 71 (Fall 1980), 221-225.
⁹K. F. Bay, "Juvenile Justice Concepts in California: Changing Concepts," *American Journal of Criminal Law*, 7 (July 1979), 189. Bay calls attention to legislative efforts (in reaction to the failure of the "father model" of court efforts to deal with delinquents) to provide community protection from juvenile criminal recidivism by treating certain juvenile criminals with the solemnity applied to adults committing similar crimes having been circumvented by court adaptations which do not adequately express legislative intent.

¹⁰Frequently these are incorporated in the notion of police professionalism, a concept which is often employed with contradictory implications. See Stephen E. Brown, "Conceptualizing Police Professionalism," *Southern Journal of Criminal Justice*, V (Fall 1980), 6-17.

from the criminal law jungle would appear to be a significant step in the long-range objective of reform and rationalization of the criminal law.

Not only would a reassessment of the immoral or antisocial conduct which possibly should be removed from the criminal law appear to be a desirable objective, but simultaneous reassessment of the whole body of criminal law would provide an opportunity for the legislature to address a number of corollary evils. The appropriateness of evaluating and, where applicable, statutorily circumscribing or making explicit legislative intent in the exercise of discretion throughout the criminal justice system—from police discretion to pretrial procedure, sentencing, and various postconviction dispositions—would provide opportunity to specifically assess an area which has been the subject of considerable concern in recent years.⁷

The need for careful legislative drafting is a paramount one. Legislatures do have the option of preventing some problematic discretionary situations from arising by careful drafting, i.e., by avoiding overlapping statutes which give rise to serious constitutional and policy issues through prohibition of the same conduct by dual statutes with differential penalties.⁸ Furthermore, when attempting changes in criminal justice processing, legislatures would be well advised to formulate rules in accordance with legislative commands in order to prevent other units of the criminal justice system from formulating their own rules which may not fully express legislative intent.⁹

II. Detection and Apprehension

Suggestions for improving police functions abound, ranging from changes in organization structure to personnel.¹⁰ There is a considerable array of modern technology which can be utilized by the policeman on the beat (such as mobile communications devices which can be carried by the officer as part of his standard equipment to information storage and retrieval systems which permit maximum strategic deployment of manpower). Strategies which promote police-community harmony and congruency of interests clearly merit encouragement, including such developments as storefront drop-in programs to communicate with residents of specific neighborhoods, establishment of neighborhood watch and prevention programs under police department encouragement and sponsorship, school liaison programs, utilization of trained unpaid auxiliary personnel (such as reserve officer programs), training for handling special situations (such as conflict management

training to aid in control of domestic disturbances and training to prevent police provoked incidents generally), and, where appropriate, handling of certain categories of offenses through techniques which provide diversion from the criminal justice system.¹¹

Most of the above techniques are in general use. Several less widely used strategies which could be more widely employed include the resident deputy program, career criminal programs, and special detection units. *Resident deputy programs*, which involve designation of officers living in or near their community of assignment to extend tours of duty in specified geographical areas, appear to produce favorable attitudes and perceptions in target communities.¹² The *career criminal programs* concept involves concentrating prosecutorial resources on repeat offenders with serious records with an intent to achieve increased convictions.¹³

Future research needs to be recognized as an important aspect of criminal justice planning. It has been observed that while there is a fund of knowledge on "how we can control, audit, and monitor people . . . we have only the most elementary knowledge of how to audit computers and those who have learned to use them . . . Existing control methodology is not adequate for internal control, or for investigation by investigatory agencies, or regulation by regulatory agencies."¹⁴ Certain types of crimes which require extended investigation and specialization are most feasibly handled by special units, sometimes housed within the prosecutor's or attorney general's office. Anticipation of the future trends and forms of crime should aid in preventing crisis reaction as opposed to proactive readiness, including specialized detection units where indicated. Increased concern with consumer protection, and the development of specific consumer fraud legislation and offices, are desirable components of protection of the public against fraud and theft. While people robbing banks might be handled through regular police channels, the issue of banks robbing people needs the development of detection and enforcement units devoted to consideration of white collar

crime. It has been suggested that business cheating is nothing less than enormous, in comparison with which street crime may be "small potatoes."¹⁵ Future research in criminal justice needs to be concerned with projecting change in order to appropriately adapt to change.¹⁶

III. Improving Efficiency of Courts

Improved detection and apprehension would be of little ultimate value without corresponding improvement in capacity and performance of courts. James has recommended several developments: streamlining of creaking court systems for a hodgepodge of independent courts with varying overlapping jurisdiction to a modern administrative system under supervision of the state supreme court; replacement of justice of the peace courts with courts with judicially trained presiding officers for criminal matters and establishment of small-claims courts and/or a system of arbitration for minor civil matters; establishment of an office of court administrator; use of modern word processing techniques and business procedures to minimize waste of time of jurors and witnesses; eliminate the old "term" system and hold court continuously as needed; diversion into other dispositional proceedings where appropriate; restriction on the use of local courts as revenue gathering systems; and significant tightening of continuances.¹⁷

One of the more seminal analyses in recent years of the functioning of courts as legal entities has been provided by Macklin Fleming,¹⁸ who feels that multiple trials of the same case, multiple review of the same issues, judicial procrastination, technical delay, sidetracking of inquiry into collateral issues, expansion of Federal power over state criminal procedure, and willingness to depart from legislative proscription have functioned to atrophy the ability of the judicial process to balance the scales of justice. Fleming stresses the need for appellate judges to acquire trial judge experience, congressional correction of lower Federal court duplication of state court functions, and replacement of absolute oligarchy with term oligarchy for Federal Supreme Court judges by limiting them to terms of 16 years.

IV. Prisons and Victims

A prison sentence is the most basic and fundamental of criminal law sanctions. For all the rhetoric of "treatment" and "correction," rehabilitation is largely an illusion. Nevertheless the notion of the propriety of imprisonment re-

mains standard. Imprisonment neither protects society nor rehabilitates criminals, with consequences that the convict who does time is likely to become the object of another police hunt after he hits the streets. Colson has spoken in terms of "the steady gradual erosion of a man's soul, like radiation slowly burning away tissue,"¹⁹ which can be a far greater punishment of nonviolent offenders than their crimes warrant. Furthermore, the prison experience itself often results in victimization by violent people within the institution²⁰ and promotes habits and attitudes which are considerably more detrimental to the convicts and society than they had before being placed in prison.

Various diversionary models have been generated by the belief that control of crime and delinquency is improved by handling offenders outside the traditional imprisonment system where possible.²¹ Alternative methods of dealing with status offenders,²² and developments such as halfway houses, work release, and shift of emphasis to community programs, are illustrative steps which have been taken to promote reintegration into the community with maximum opportunity to avoid recidivism, and, at the same time, give expression to values which reflect humanitarian goals.

The criminal justice system is almost totally oriented toward the criminal. Procedural law is designed to protect rights of the accused. The criminal justice process, ostensibly, is designed to aid, treat, correct the criminal. In this sense, it is the needs of the criminal himself which is the focus of attention. Although it is impossible to separate the interests of the criminal and the interests of society in that society benefits from whatever system that minimizes the likelihood of future criminal acts, there is a deficiency injustice when criminals, who inflict pain and degradation upon individuals and families, are allowed to "pay their

debt to society" without restitution to the individuals who have been injured.²³

Mikva has called attention to the understandable chagrin of citizens who observe the guilty released for what appears to be trivial reasons unrelated to factual guilt (as failure of the police to say the right words when making an arrest) or when criminals are given probation and are returned to the street in assembly line justice which paroles persons to commit more crimes. Public frustration can lead to episodic draconian punishment. The malaise is compounded because "the malfunctioning prison system hardens prisoners and thus compounds rather than corrects the problems."²⁴ Mikva suggests that a suitable method for mediating between system insensitivity to victims and their families and the frequently counterproductive effects of prisonization would be provision of some sort of "restitution or compensation. . . to make the victim whole again. Compensation for loss of life may be impossible, but that impossibility should not absolve the transgressor from any responsibility whatsoever for the damage he has caused." Mikva feels that "instead of sending a criminal to jail and ignoring him and the victim, we should seriously consider. . . programs which will allow the offender to earn enough money to recompense the victim."²⁵

Although several states have established some kind of victim compensation program, restitution is not frequently employed by American courts. Nevertheless, the point seems well taken that *criminal proceedings need to be applied in the interest of the individual victim as well as society as a whole*. While the logistical and structural problems do present difficulties, and restitution to victims is certainly not a total answer to the failures of the correctional system, or of the discrepancy between the treatment aims and inability to rehabilitate, restitution doubtless should receive greater correctional significance.²⁶

V. Utilization of Research

Rational policy probably has been handicapped by lack of systematic reliable information about the workings of various components of the criminal justice system so that its basic patterns, component elements, differential outcomes, and real outcomes can be effectively chartered. Information for legislative guidance probably has been largely intuitive, haphazard, and improvisatory. Consequently, it is not surprising that the criminal justice system should largely develop in haphazard fashion, or that various buzz

¹¹Robert Trojanowicz and S. L. Dixon, *Criminal Justice and the Community* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1974).

¹²F. Knapp, et al., "The Effects of a Resident Deputy Program on Attitudes and Perceived Law Enforcement Services," *Southern Journal of Criminal Justice*, V (Fall 1980), 48-61.

¹³Peter W. Greenwood, "Career Criminal Prosecution: Potential Objectives," *Journal of Criminal Law and Criminology*, 71 (Summer 1980).

¹⁴B. James McGregor, *White Collar Crimes: Defense and Prosecution* (New York: PLI, 1971), pp. 20-21.

¹⁵A. C. Germann, et al., *Introduction to Law Enforcement and Criminal Justice* (Springfield, C. J. Thomas, 1973), p. 387.

¹⁶Gene Stephens, "Why Study the Future of Criminal Justice?" *Southern Journal of Criminal Justice*, V (Fall 1980), 74-86. Cf. H. Sepler, "The Next Twenty-Five Years Facing the Criminal Justice System," *American Journal of Criminal Law*, 7 (March 1979), 147-166.

¹⁷B. James, *Crisis in the Court* (New York: McKay, 1968).

¹⁸The Price of Perfect Justice: *The Adverse Consequences of Current Legal Doctrine on the American Courtroom* (New York: Basic Books, 1974).

¹⁹Charles Colson, *Born Again* (Washington: Chosen Books, 1976), p. 284.

²⁰For example, fear, intimidation, extortion, abuse, and degradation appear to be a common infliction upon those who are not saved from fellow prisoners by their size and strength. Russel Kirk, "Criminal Character and Mercy," *Modern Age*, 24 (Fall, 1980), 338-344. Homosexual rape appears to be an event which only the toughest and more hardened are able to escape. Alex Thio, *Deviant Behavior* (Dallas: Houghton Mifflin, 1978), pp. 135-137. Federal District Court Judge Frank M. Johnson, responding to criticisms of a 1976 judicial holding that Alabama State prisons were unfit for human habitation, observed that elimination of physical and mental indignities such as gang rapes, with 1976-77, 2-27.

²¹R. M. Carter, "The Diversion of Offenders," in P. Cromwell and J. Schryver, *Jails and Justice* (Springfield: Charles C. Thomas, 1976), p. 56.

²²Frank A. Orlando, "Status Offenses: The Court's Role," *Resolution (Of Conflicts in Correctional)*, 1 (Winter 1976).

²³George T. Falkenberg, *The Criminal Justice System: Its Functions and Personnel* (Englewood Cliffs: Prentice-Hall, 1973).

²⁴Abner J. Mikva, "Victimless Justice," *Journal of Criminal Law and Criminology*, 71 (Fall 1980), 190.

²⁵*Ibid.*

²⁶J. Polish, "Rehabilitation of Victims," in J. Schultz and J. Thames (eds.), *Criminal Justice Systems Review* (Buffalo, N.Y., 1974), pp. 276-329. Cf. Michael R. McAdam, "Emerging Issue: An Analysis of Victim Compensation in America," *Urban Lawyer*, 7 (Spring 1976), 346-366. For discussion of the restitution rationale and illustrative programs, see Campbell, *op. cit.*

words which come in vogue, i.e., community-based innovative treatment, etc., can become semantic trivia for traditional programs in new buildings. Furthermore, a procedure which becomes established develops its own self-serving constituency irrespective of its effectiveness, and becomes a status-quo vested interest which is difficult to reliably measure and evaluate without objective evaluative data.

There is a need for more reliable planning and legislative policy input beyond a hodgepodge of unfounded assumptions, ignorance, fear, apathy, vested interest, and inertia. Research and evaluation must be recognized as fundamental elements of management at each level in the criminal justice system.²⁷ Systems analysis research which will provide critical data for decisionmaking, prediction research, evaluation research as to which correctional measures are most feasible for certain categories of offenders, crime analysis research to aid in the deployment and allocation of personnel, are illustrative areas in which research data is needed. Morris and Hawkins, commenting on the need for criminal justice system research, observe:

... our ignorance seriously impedes effective social control. It may also impede acceptance of more humane and more effective treatment methods. The common assumption is that deterrence and reform represent some sort of natural antinomy. Whether they conflict in fact will be known only when we better understand our capacity to influence human behavior by threats and by retraining programs and when we

²⁷R. J. Waldron, et. al., *The Criminal Justice System: An Introduction* (Dallas: Houghton Mifflin, 1980), pp. 392, ff.

²⁸*The Honest Politician's Guide to Crime Control*, p. 261.

understand the proper limits and roles of each. We are in the prehistory of such studies.²⁸

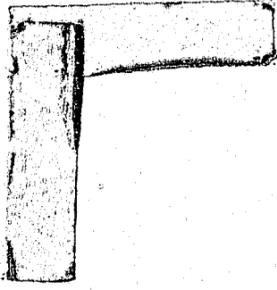
Summary and Conclusions

It has been suggested that perhaps in no other area of human services has the contrast between aspiration and reality been so great as in the area of criminal justice. The criminal justice system is a loosely organized interrelationship of units which deal with criminal justice matters. It is suggested that a major step to desirable reform and alteration is a careful assessment of what the criminal law philosophically should and realistically can be expected to accomplish. Criminal law overreach, particularly into the area of private morality, would appear to have a number of dysfunctional consequences. Improving the efficiency of the courts, both in terms of administrative practice and the legal parameters of the judicial enterprise, are necessary to any comprehensive design for overall improvement of the criminal justice system.

It is further suggested that rediscovery of and practical implementation of the rights of and concern for victims provides a desirable philosophical base for development of approaches which strike a balance in mediating the important issues of justice, punishment, deterrence, and treatment. Victim restitution, while not a system cure-all, is probably more desirable than "paying a debt to society" through imprisonment. Reliable evaluative and planning data are requisite for effective management at all levels in the criminal justice system.

WHEN a Federal judge sentences a criminal offender to the custody of the Attorney General for a term of imprisonment, two things are nearly certain. The offender will not be guarded by the Attorney General, and custody will not last for the stated term. The language of the judgment is the language of fiction. Its majestic phrases will, nevertheless, trigger a series of bureaucratic responses that are distinctly nonfictional — responses that will determine the character of the offender's imprisonment experience and the timing of release from custody.

—ANTHONY PARTRIDGE



END